from another State where the killing was lawful" was no defense, and the statute was declared to be a valid police regulation. *Phelps* v. *Racey*, 60 N. Y. 10 (1875). The latter case is said to have been overruled by *People* v. *Buffalo Fish Co.*, 164 N. Y. 93 (1900), but the only point upon which a majority of the court agreed was that the legislature did not intend the statute to apply to foreign game. Portions of the opinion referring to *Phelps* v. *Racey* are *dicta*. A number of State decisions are in accord with *Phelps* v. *Racey*, *supra*. *Ex parte Maier*, *supra*; *State* v. *Rodman*, *supra*; *Magner* v. *People*, 97 Ill. 320 (1881); *State* v. *Farrell*, 23 Mo. App. 176 (1886).

There are very few decisions of Federal courts on this point. *In re Davenport*, 102 Fed. 540 (1900), a result was reached exactly opposed to that in *In re Deininger*, *supra*, the statute being declared unconstitutional as regulating interstate commerce. Though the question has never been squarely presented to the Supreme Court, it may reasonably be inferred that that court would uphold such statutes. In the *Geer* case, *supra*, it was said, p. 534: "The right to preserve game flows from the undoubted existence in the State of a police power to that end, which may be none the less efficiently called into play because by so doing interstate commerce may be remotely and indirectly effected." While this statement was made with reference to that particular case, the court referred with marked approval to *Ex parte Maier*, *supra*, and similar State decisions, and expressly disapproved of decisions to the contrary. It would seem that the prohibition against the importation of game is quite as great a protection to domestic game as the prohibition against exportation, since the cover for fraud and the illegal capture of game within the State is removed. This argument, however, was expressly rejected by three of the judges in *People* v. *Buffalo Fish Co.*, *supra*.

What bearing the "original package" decisions have upon this subject has never been decided. Indeed, the point seems never to have been raised, nor is it clear what would be an "original package" of game. A recent Act of Congress provides that all dead game, the importation of which into any state is prohibited, shall, upon arriving in such State, be "subject to the operation and effect of the laws of such State or territory enacted in the exercise of its police power to the same extent and in the same manner as though such animals or birds had been produced in such State or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." U. S. Stat. at Large, Vol. 31, chap. 553, secs. 3 and 5, pp. 187–188, May, 1900. The validity and construction of this act have not yet been brought before the Supreme Court. What effect it will have upon this much confused subject remains to be seen.

REVOCATION OF LICENSE TO WHARF OUT.—The Circuit Court for the Southern District of Alabama, has decided in the case of *Sullivan Timber Co.* v. *City of Mobile*, 110 Fed. 186 (Oct. 1901), that though a littoral owner has as such no right to wharf out, yet if, with the permission of the city, in which the title

to the bed of the river was vested, he does wharf out, such permission cannot be withdrawn, nor can the wharves be removed. The decision is based on the theory that when a license has been acted upon, and expenditures made in reliance thereon, it becomes irrevocable; and that one who permits another to make improvements upon his land without objection is estopped to bring ejectment.

At common law the title to submerged land was in the crown, and any erection thereon could be removed as a purpresture. The law in this country to-day is the same, save where it has been changed by statute or by usage, and in consequence the riparian owner has no right to wharf out. *Shively* v. *Bowlby*, 152 U. S. 1 (1894); *Revell* v. *People*, 177 Ill. 468 (1899). The case of *Yates* v. *Milwaukee*, 10 Wall. 497 (1870), has been regarded as holding otherwise; but any statements therein to that effect are no longer law, *Shively* v. *Brown*, *supra*, and in reading the case it should be noted that by the law of Wisconsin, riparian owners have been given the right to wharf out. *Yates* v. *Milwaukee*, *supra*, at p. 504. There is a usage in Alabama giving the littoral owner the same right, so the principal case could have been decided on this point without any discussion of irrevocable license and estoppel. In this latter respect the case is most unsatisfactory. If the plaintiff entered on the defendants' lands under a license, they acquired no interest or estate therein, for a license is but a privilege, revocable at the will of the licensor, and, "even where a consideration is paid, the right of revocation exists, where the terms of the agreement are not of such a nature as to make out a valid agreement which could be enforced in equity. Nor does the fact of the performance of the agreement render it effectual and valid unless the acts of performance are so clear, definite and certain in their object and design, as to refer exclusively to a complete and perfect agreement of which they are a partial execution." *Cronkheit* v. *Cronkheit*, 94 N. Y. 106 (1884). There are some jurisdictions holding a contrary view where the license has been acted upon. These are, notably, Indiana, Iowa and Pennsylvania. *Snowden* v. *Wilas*, 19 Ind. 10 (1862); *Beatty* v. *Gregory*, 17 Ia. 109 (1864); *Baldwin* v. *Taylor*, 166 Pa. St. 507 (1895). The decisions are based upon the theory of the specific performance of contract, and an equitable estoppel. Of course, there is no contract in reality for the parties made none; nor is there any misrepresentation or fraud on the part of the licensor, whereon to base an estoppel. The only representation that the licensor made was an express one, permitting the licensee to enter and use the land presently. If the licensee desired any greater right, he should have been at pains to get it.

Nor do the cases bear out the holding of the court that, where an owner fails to object to the putting of improvements upon his land by another, without his consent,. that other gains any rights against the owner. *Sherred* v. *Cisco*, 4 Sand. 480 (1850); *Day* v. *Caton*, 119 Mass. 513 (1876). *Kirk* v. *Hamilton*, 102 U. S.

68 (1880), cited by the court to support its decision is plainly distinguishable. There the owner made fraudulent representations to the defendant in ejectment, and was held estopped. Nor does the *Ry. Co.* v. *Jones*, 68 Ala. 49 (1880), likewise cited by the court, decide this point. The case simply holds that though a railroad company, before exercising its right of eminent domain, must make the owner compensation, the owner may waive this condition, and that if he knowingly permits the company to enter and lay its tracks without objection, he will be held to have so waived it.

But *in equity*, if one whose land has been improved seek relief, it will be granted to him only on his paying the value of the improvements made in good faith. *Smith* v. *Drake*, 8 C. E. Gr. 302 (N. J. 1873). And in some cases the party making the improvements has been given affirmative relief, by making the value of his improvements a lien upon the land. *Bright* v. *Boyd*, 1 Story, 478 (1840); *contra*, *O'Conner* v. *Hurley*, 147 Mass., 145 (1888).

RIPARIAN RIGHTS AS PROPERTY IN NEW YORK.—The nature of the interest which riparian proprietors possess has been the subject of much diversity of opinion. Private title to lands abutting on navigable streams ends at high water-mark, and the title to the tideway—the shore between high and low water-marks—vests in the State as trustee for the people. The owner of abutting property possesses those rights of access to the stream, which are commonly called riparian rights, to use and enjoy in proper subjection to the right of the public. In a recent case—*In re City of New York*, 61 N. E. 158 (N. Y. Oct. 1901)—it was held that riparian rights are property, and that when these were appropriated by the City of New York in the construction of a driveway, the owner is entitled to due compensation.

Riparian rights have not always been regarded as property, even in New York. The early case of *Lansing* v. *Smith*, 8 Cowen, 146 (1828), decided that they could be appropriated without any compensation to the abutting property owners, within the meaning of the seventh section of Article VII of the State Constitution, providing "that private property shall not be taken for public use without just compensation." This doctrine was applied and extended by *Gould* v. *Ry. Co.* 6 N. Y. 522 (1852), which decided that the owner of property abutting on a navigable stream was entitled to no compensation for the appropriation of his riparian rights by a railroad company in the construction of its road. That riparian rights are *not* property may be regarded as the well-established law in New York at that date. This doctrine was not long acquiesced in, however, and was severely criticised by a long line of decisions from the *Story* case, 90 N. Y. 125 (1882), to *Kane* v. *R. R.*, 125 N. Y. 184 (1891). A later case—*Rumsey* v. *R. R.*, 133 N. Y. 79 (1892)—directly overruled the *Gould* case, and held that riparian rights are property. In the words of Mr. Justice MILLER, quoted with approval in that case, "This riparian right is property, and